

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request for Arbitration of
Interconnection Agreements by Certain
Minnesota Independent Telephone Companies
with Qwest Wireless LLC and TW Wireless
LLC Pursuant to Minn. Rules pt. 7811.1700

ISSUE DATE: December 22, 2003

DOCKET NO. P-401, et al./IC-03-1893

ORDER DENYING MOTION TO DISMISS,
GRANTING ARBITRATION AND
ASSIGNING ARBITRATOR

PROCEDURAL HISTORY

On November 26, 2003, a group of independent telephone companies (the Petitioners) listed in Attachment A filed a request for arbitration of unresolved issues relating to interconnection negotiations between themselves and Qwest Wireless LLC and TW Wireless LLC (collectively Wireless Carriers) pursuant to Minn. Rules part 7811.1700. They state that they began negotiations on June 23, 2003.

On December 15, 2003, the Wireless Carriers filed a motion to dismiss.

This matter came before the Commission on December 18, 2003.

FINDINGS AND CONCLUSIONS

I. The Petition

The Petitioners are seeking compensation for use of their respective networks by the two Wireless Carriers in the termination of calls from the Wireless Carriers to landline customers. The only outstanding issue is the effective date of the agreement. This will determine the periods of time for which reciprocal compensation is owing between the parties.

The Petitioners stated that the form of agreements, network configurations for traffic exchange and applicable rates have been agreed upon by the parties.

The Petitioners requested expedited arbitration, to commence as soon as possible, pursuant to Minn. Rules Part 7811.1700, to resolve this single outstanding issue.

II. The Motion to Dismiss

The Wireless Carriers argue that interconnection agreements have only prospective effect, and that this fact cannot be varied by arbitration. The Wireless Carriers claim that the parties already agree to all the terms of their interconnection agreement. But the Petitioners refuse to sign the agreements, according to the Wireless Carriers, because they seek to use the compulsory arbitration clause found in the Federal Telecommunications Act of 1996 (the Act)¹ as a means to collect on debts arising in 1997 and thereafter.

The Wireless Carriers do not concede the merits of the Petitioners' claims. But more importantly, the Wireless Carriers argue that the Act's arbitration clause is an inappropriate vehicle for resolving such disputes. Consequently, they ask the Commission to dismiss the petition for arbitration.

III. The Decision to Arbitrate

A. Legal Standard

The Act's section 252(b)(1) establishes the right of a negotiating party to request arbitration from a State commission. The Act states:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(2)(A) of the Act imposes three conditions for a valid arbitration filing. First, the petitioner must be a party to the negotiations. Second, the petitioner must file its request within the prescribed 135 to 160 day window following the request for negotiation. Finally, the petitioner must include as part of its petition all relevant documentation concerning the issues and the parties' positions on those issues.²

¹ Federal Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

² The Commission has adopted a rule which, as relates to eligibility for arbitration, closely reflects the federal requirements and provides direction regarding what must be filed to meet the federal requirement that the party seeking arbitration file "all relevant documentation concerning the issues and the parties' positions on those issues." See Minn. Rules, part 7811.1700, subp. 1.

B. Commission Action

The Commission finds that the Petitioners meet all three conditions in the Act as well as the more specific requirements of Minnesota Rules part 7811.1700, subp 1. The Petitioners, as the collective party that requested negotiations, qualifies as one of the parties to the negotiations. The Petitioners filed their petition on November 26, 2003, the 156th day after the June 23, 2003 start of formal negotiations, which places the filing date within the 135 to 160 day window. Finally, the Petitioner's petition states the issue for arbitration and states the position of the negotiating parties on the submitted issue.

The Wireless Carriers' motion to dismiss did not address any of the conditions for arbitration per se. Instead, the motion is grounded in the argument that the issue identified for arbitration – the interconnection agreement's effective date – is beyond the scope of arbitration. But the law is, at best, ambiguous on this point. The Act directs the Commission to arbitrate "any open issues." 47 U.S.C. § 252(b)(1). This Commission has a duty to "resolve each issue set forth in the petition..." 47 U.S.C. § 252(b)(4)(C), and only such issues, 47 U.S.C. § 252(b)(4)(A). Moreover, the Commission has previously referred for arbitration the issue of the retroactive effective date of an interconnection agreement with the Wireless Carriers; the Wireless Carriers raised no objection at that time.³ Consequently, the Commission will decline to dismiss the petition for arbitration at this time.

Since the Petitioners meet the three conditions for arbitration filings under the Act, the Commission will grant the Petitioners' request for arbitration. While the Commission will deny the Wireless Carriers' motion to dismiss, the Wireless Carriers are free to pursue the substance of their objections with the arbitrator.

IV. Assignment of Arbitrator

The Commission will send this matter to the Office of Administrative Hearings for arbitration proceedings under Minn. Rules part 7811.1700. The Administrative Law Judge assigned to this arbitration is Beverly Jones Heydinger.

The Commission requests that the arbitrator conduct the arbitration consistent with the Commission's arbitration rules, Minnesota Rules, part 7811.1700. Pertinent parts of the rule are discussed below:

³ In the Matter of the Request for Arbitration of Interconnection Agreements by Mankato Citizens Telephone Company, Mid-Communications, Inc., and Crystal Communications Inc., with Qwest Wireless LLC and TW Wireless LLC pursuant to Minn. Rules pt. 7811.1700, Docket No. P-6250,5508,414,416,5107/IC-03-1448 ORDER GRANTING ARBITRATION AND ASSIGNING ARBITRATOR (October 6, 2003).

- Subpart 16 provides that the assigned arbitrator must hold at least one prehearing conference no later than ten days after the response to the petition is received. Since the Wireless Carriers response must be filed no later than December 21, 2003, the prehearing conference must be scheduled to take place on or before December 31, 2003, assuming that the Wireless Carriers respond by December 21, 2003. This requirement will be met since the Prehearing Conference will be held on December 30, 2003 at 9:30 A.M. in the Commission's Small Hearing Room.
- Subpart 19 provides that the arbitrator must issue a recommended decision in writing "no later than 35 days before the date nine months after the request for negotiation that gave rise to the arbitration." Thus, the arbitrator's recommended decision is due no later than February 17, 2004.

The Commission emphasizes the importance of this timetable because its own schedule for taking final action on the petition is tight. Subpart 21 of the Commission's Arbitration Rules requires the Commission to issue a final arbitration decision no later than 35 days after receiving the arbitrator's recommended decision. Assuming the arbitrator's recommendation is submitted February 17, 2004, the Commission has only until March 23, 2004, to make a final decision.

ORDER

1. The Wireless Carrier's motion to dismiss is denied.
2. The Commission assigns this matter to Administrative Law Judge Heydinger for arbitration. The arbitrator is requested to conduct the arbitration consistent with the Commission's Arbitration Rules (Minn. Rules, part 7811.1700), as discussed in the text of this Order, and to provide a recommendation in this matter no later than February 17, 2004.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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Petitioners

Ace Telephone Association	Kasson Mantorville Telephone Company
Albany Mutual Telephone Association	Lakedale Telephone Company
Arrowhead Communications Corp.	Lonsdale Telephone Company
Arvig Telephone Company	Loretel Systems, Inc.
Benton Cooperative Telephone Company	Lowry Telephone Company
Blue Earth Valley Telephone Company	Madelia Telephone Company
Bridge Water Telephone Company	Melrose Telephone Company
Callaway Telephone Company, Inc.	Mid-State Telephone Company
Cannon Valley Telecom, Inc.	Midwest Telephone Co.
Clara City Telephone Company	Minnesota Lake Telephone Company
Consolidated Telephone Company	New Ulm Telecom, Inc.
Eagle Valley Telephone Company	Osakis Telephone Company
East Ottertail Telephone Company	Paul Bunyan Rural Telephone Company
Easton Telephone Company	The Peoples Telephone Co. of Bigfork
Eckles Telephone Company	Pine Island Telephone Company
Emily Cooperative Telephone Company	Runestone Telephone Association
Farmers Mutual Telephone Company	Sacred Heart Telephone Company
Federated Telephone Cooperative	Scott-Rice Telephone Company
Federated Utilities, Inc.	Sherburne County Rural Telephone Co.
Felton Telephone Company, Inc	Sleepy Eye Telephone Company
Gardonville Coop Telephone Assn.	Spring Grove Coop Telephone Company
Granada Telephone Company	Starbuck Telephone Company
Halstad Telephone Company	Twin Valley-Ulen Telephone Company
Harmony Telephone Company	Western Telephone Company
Hills Telephone Company	Winsted Telephone Company
Home Telephone Company	Woodstock Telephone Company
Hutchinson Telephone Company	Zumbrota Telephone Co.
Interstate Telecommunications	